

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD BRANIN, *et al.*,

Plaintiff,

v.

ASARCO INCORPORATED,

Defendant.

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Case No. C93-5132FDB

ORDER DENYING WINGARD'S
MOTION TO COMPEL
ARBITRATION AND TO STAY
DISTRIBUTION OF THE
PROPERTY VALUE ASSURANCE
FUND


This matter is before the Court on the motion of James L. Wingard, a member of the Owner Class, to compel arbitration and stay distribution of the Property Value Assurance Fund. Wingard gave notice of his claim under the Property Value Assurance Program on June 9, 2005; on June 22, 2005 ASARCO determined that Wingard was an eligible member of the Owner Class for participation in the Value Assurance Program set forth in Exhibit IV of the Branin Class Action Settlement Agreement; on August 10, 2005, ASARCO filed for Chapter 11 protection in federal bankruptcy court in the Southern District of Texas, Corpus Christi, Texas. All litigation against ASARCO was automatically stayed pursuant to 11 U.S.C. § 362(a). Wingard had employed attorneys in Corpus Christi to file a claim in the bankruptcy court and to lift the stay.

1 The Branin Owners and Renters Classes (the Branin Classes) oppose Wingard's motion
2 arguing that this Court is without jurisdiction to grant the relief requested by Wingard because all
3 litigation was automatically stayed when ASARCO filed its bankruptcy petition. The Branin Classes
4 argue that under the terms of the Property Value Assurance Fund (PVAf) program established in
5 Exhibit IV to the Settlement Agreement, the PVAf is the exclusive source for funding the
6 arbitrators' fees and for payment of any award that may be made by the arbitrators, and, also, the
7 PVAf is an asset of the ASARCO bankruptcy estate.

8 The Court agrees with the Branin Classes argument that this Court is without jurisdiction to
9 grant the relief requested while the automatic bankruptcy stay is in effect.

10 ACCORDINGLY, IT IS ORDERED: Motion of James L. Wingard to Compel Arbitration
11 Proceedings and To Stay Distribution of The Property Value Assurance Fund [Dkt. # 1386] is
12 DENIED without prejudice.

13 DATED this 25th day of January, 2006.

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16 FRANKLIN D. BURGESS
17 UNITED STATES DISTRICT JUDGE
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